IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7217 OF 2004

Shri Dharma Baburao Gaikwad .... Petitioner

Versus

Smt Laxmibai Madhavrao Gaikwad & anr.Respondent

Mr.P.N.Joshi for Petitioner

Mr.S.M.Sabrad for Respondent

CORAM : A.S.Oka, J

DATE: 10th December, 2004

P.C.:

1. By an order dated 6th September, 2004 this court issued notice for final disposal at the admission stage. Accordingly, I have taken up the petition for final disposal.

2. This petition under Article 227 of the Constitution of India is filed by the original defendant no.1. The respondent no. 1 is the original plaintiff and respondent no.2 is the original defendant no.2. The suit filed by the respondent no.1 came to be dismissed on 20th June, 2003. An appeal was preferred by the respondent no.1 to the District Court for challenging the decree of the trial court. In appeal, an application for interim injunction was made by the respondent no.1. By the impugned judgment and order dated 3rd July, 2004 the learned Additional District Judge, Niphad disposed of the said application by directing both the parties to maintain status quo as of that date. This court by the ad interim order dated 6th September, 2004 has stayed the operation and implementation of the said order.

3. Learned counsel appearing for the petitioner submitted that the order of interim injunction was never operating in favour of the respondent no.1 and therefore the appellate court could not have passed any interim order in favour of the respondent no.1 in the pending appeal. Learned counsel for the respondent no.1 vehemently urged that the respondent no.1 was in possession of the suit property and the appellate court has given

cogent reasons for passing the interim order.

4. I have considered the rival submissions. It is not in dispute that even during the pendency of the suit which was filed in 2000 the order of interim injunction was not granted in favour of the respondent no.1/plaintiff. After full trial, the suit has been dismissed. In my view, when the interim relief was never granted in favour of the respondent no.1/plaintiff, even during the pendency of the suit, after the suit was dismissed in appeal preferred by the respondent no.1 against the decree of dismissal, interim relief of such a nature could not have been granted. After considering the oral and documentary evidence on record, the trial court recorded a finding that the respondent no.1 has failed to prove the title and possession over the suit land.

5. In the circumstances, the impugned order is unsustainable and the same deserves to be set aside.

6. Hence, I pass the following order :

(i) The impugned judgment and order dated 3rd July, 2004 is quashed and set aside. Application at Exhibit 5 in Regular Civil Appeal No.54 of 2003 stands rejected. The appellate court is directed to decide the appeal as expeditiously as possible and in any event on or before 30th April, 2005.

(ii) Rule made absolute in the above terms with no order as to costs.

(iii) It is made clear that the observations which are made in the order passed by this court are made for limited purpose and the appeal will be decided by the appellate court on its own merits.

A.S.OKA, J